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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,165	12/07/2001	Kari Aasbo	2001-1245A	9227

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EXAMINER
SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/936,165

Examiner

C. SAYALA

Applicant(s)

AASBO ET AL.

Art Unit

1761

-- The MAILING DATE f this communication appears n the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.5.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all the claims, - -A- - should be inserted at the beginning of the claim.

"Preferred" in the claims is indefinite because it is not clear if applicant intends to claim only the preferred limitation. See claims 3-5, 9-10, 14-18 and 28.

"Short" chain is indefinite in the claims insofar as it does not define how many carbons constitute "short". There is no definition in the specification either.

Claims 12-13 provide for the use of silage, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 12-13 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/37168.

The composition containing antioxidants such as gallate or tocopherols (claim 2) and a preservative agent such as sorbic acid or propionic acid and its salts or benzoic acid and its salts. Also at claim 4, the patent teaches citric and malic acids.

5. Claims 1-2, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Talmage et al. (US Patent 3284212).

The claims include citric acid and BHT as a preservative.

6. Claims 1-2, 6-7, 12-13, 19, 23 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindsay (US Patent 4915876).

Lindsay discloses a composition that includes formic or acetic or propionic or butyric acid and mixtures. See col. 3, lines 65-69 and antioxidants such as BHA, BHT, tocopherol, TBHQ and mixtures. See col. 5, lines 44-57. Also see claims 7 and 11, 21 and 25.

7. Claims 1-2, 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by SU 1449095.

This patent teaches using agidol, which is known to be BHT, with formic acid as a preservative for silage.

Prior Art of Record


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references submitted by applicant: SE 455754, NO 155273, DK 141922 and Norsk Fiskeoppdrett, Bergen 1976, do not have abstracts nor could translations/abstracts be obtained. However, it was determined that these references were pertinent. Until such time that translations can be obtained, these references have been set aside for application at a later date. If translations are available, applicant is urged to forward them for consideration.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.


C. SAYALA
Primary Examiner
Group 1700.